

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

HILAND PARTNERS GP HOLDINGS,)
LLC, a Foreign Company, HILAND)
PARTNERS, LP, a Foreign Partnership, and) CIVIL NO. |: 14-cv-025
HILAND OPERATING, LLC, a Foreign)
Company,)
Plaintiffs,)
v.)
NATIONAL UNION FIRE INSURANCE)
COMPANY OF PITTSBURGH, PA,)
Defendant.)

COMPLAINT FOR DECLARATORY JUDGMENT

COME NOW the Plaintiffs, Hiland Partners GP Holdings, LLC, Hiland Partners, LP, and Hiland Operating, LLC, seeking a declaratory judgment from this Court under F. R. Civ. P. 57 and 28 U.S.C. § 2201 declaring that they are additional insureds under an insurance policy between Missouri Basin Well Services, Inc. and National Union Fire Insurance Company of Pittsburgh, PA, requiring National Union Fire Insurance Company of Pittsburgh, PA to defend and indemnify Plaintiffs in Civil No. 1:13-CV-052, Chapman et al v. Hiland Partners, LLC et al.

I. PARTIES

1. Plaintiff Hiland Partners GP Holdings, LLC, is a foreign limited liability company duly organized under the laws of the state of Delaware, with its principal place of business located in the state of Oklahoma. Hiland Partners GP Holdings, LLC is authorized to do business in the state of North Dakota.

2. Plaintiff Hiland Partners, LP, is a foreign partnership duly organized under the laws of the state of Delaware, with its principal place of business located in the state of Oklahoma. Hiland Partners, LP is authorized to do business in North Dakota.

3. Plaintiff Hiland Operating, LLC, is a foreign limited liability company duly organized under the laws of the state of Delaware, with its principal place of business in the state of Oklahoma. Hiland Operating is authorized to do business in the state of North Dakota.

4. The organizational structure of Plaintiffs is such that Hiland Partners GP Holdings, LLC, is the general partner of Hiland Partners, LP, and Hiland Partners, LP, is the sole member of Hiland Operating, LLC.

5. Plaintiffs (together, "Hiland") collectively own and operate a gas plant in Watford City, North Dakota, which treats or otherwise processes natural gas and fractionates and markets natural gas liquids.

6. Defendant National Union Fire Insurance Company of Pittsburgh, PA, ("National Union") is duly organized under the laws of the state of Pennsylvania, with its principal place of business in the state of New York.

7. Hiland is insured through Defendant National Union by way of an Endorsement providing that any entity Missouri Basin Well Service, Inc., contracts with is deemed an additional insured of National Union under Missouri Basin's insurance policy with National Union. Hiland contracted with Missouri Basin. See Missouri Basin MSC, attached hereto and marked as Exhibit A.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332 in that there is complete diversity of citizenship between the Plaintiffs, citizens of the state of Delaware, and the Defendant, a citizen of the state of Pennsylvania.

9. The matter in controversy in regard to the Defendant exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

10. Venue of this action is in this judicial district under 28 U.S.C. § 1391(b)(2) and this action is properly filed in this judicial district under 28 U.S.C. § 1391(c)(2) and Civil Rule 3.1(A), D.N.D. Civ. L.R.

III. FACTS

11. Hiland and Missouri Basin entered into a Master Service Contract dated July 23, 2008 (“Missouri Basin MSC”). Under the terms of the Missouri Basin MSC, Missouri Basin agreed to, among other things, procure and maintain policies of insurance in favor of Hiland at Missouri Basin’s sole expense. Coverage under the insurance required to be carried by Missouri Basin was to be primary insurance and to name Hiland as additional insured. See Missouri Basin MSC, attached hereto and marked as Exhibit A.

12. Missouri Basin procured an insurance policy through Defendant National Union, policy number 0935985, on April 13, 2011, effective through April 12, 2012. An Endorsement to policy number 0935985, also dated April 13, 2011, provides that Commercial General Liability (CGL) coverage extends to additional insureds, and states that any person or organization to whom Missouri Basin is obligated to include as an additional insured under this policy, as a result of any contract or agreement, is an additional insured. Coverage amounted to

\$1,000,000.00 per occurrence. See National Union Policy No. 0935985 and Endorsement, attached hereto and marked as Exhibits B and C.¹

13. Pursuant to the Missouri Basin MSC and the Endorsement to National Union policy 0935985, Hiland was an additional insured under Missouri Basin's insurance policy through National Union.

14. The Missouri Basin MSC also provided that Missouri Basin would perform, or retain subcontractors to perform, services for Hiland.

15. On or about October 18, 2011, Hiland retained Missouri Basin to perform certain services pursuant to the Missouri Basin MSC at Hiland's Watford City gas plant. Missouri Basin in turn employed B&B Heavy Haul as its subcontractor to perform Missouri Basin's duties and responsibilities for Hiland on or about this day. Lenny Chapman, an employee of B&B Heavy Haul, was dispatched by B&B at the request of Missouri Basin to the Watford City gas plant to perform services using a B&B truck. While performing these services for Hiland and Missouri Basin pursuant to the Missouri Basin MSC and a Master Service Contract entered into between Missouri Basin and B&B, Lenny Chapman suffered injuries.

16. On or about April 26, 2013, Lenny Chapman and his spouse, Tracy Chapman, sued Hiland in the United States District Court for the District of North Dakota, civil number 1:13-cv-52, for damages arising out of injuries allegedly suffered by Lenny Chapman while performing services on behalf of Hiland pursuant to the Missouri Basin MSC and on behalf of Missouri Basin pursuant to the B&B MSC, as well as for damages allegedly suffered by Tracy Chapman. See Third Amended Complaint - Civil Number 1:13-cv-52, attached hereto and marked as Exhibit D.

¹ The Endorsement attached and marked as Exhibit C, is an extraction of the National Union Policy No. 0935985, attached and marked as Exhibit B. The Endorsement (Exhibit C) is also identified as page 45 of the Policy (Exhibit B).

17. On or about July 2, 2013, Hiland, as third-party plaintiff, sued Missouri Basin and B&B Heavy Haul as third-party defendants pursuant to Missouri Basin and B&B's duties to indemnify and defend Hiland under the Master Service Contracts. See Third-Party Complaint - Civil Number 1:13-cv-52, attached hereto and marked as Exhibit E.

18. On or about April 30, 2013, Hiland requested National Union comply with its obligations under its Endorsement to Policy No. 0935985 and the Missouri Basin MSC, and accept the tender of the defense and indemnity in case number 1:13-cv-52. See Letter from Margaret Clarke to Tracy Bontrager and W. Todd Haggart, attached hereto and marked as Exhibit F.

19. National Union has wrongfully, and in breach of the 0935985 Policy Endorsement, failed to accept the tender of defense and request for indemnity.

IV. CLAIM FOR DECLARATORY JUDGMENT

Plaintiff re-alleges paragraphs 1 through 19 of this Complaint as fully set forth herein.

20. The Missouri Basin MSC and Missouri Basin's National Union Policy No. 0935985 and Endorsement require that National Union defend and indemnify Hiland in case number 1:13-cv-52.

21. National Union's refusal to defend and indemnify Hiland constitutes a breach of its obligations under the Insurance Policy.

22. Due to National Union's failure to respond to Hiland's request that it defend and indemnify Hiland in case number 1:13-cv-52, Hiland's only legal option is to seek this judgment from the Court declaring that Hiland is an additional insured under Missouri Basin's Insurance Policy, No. 0935985, and ordering that National Union defend and indemnify Hiland in case

number 1:13-cv-52, which constitutes the actual controversy between the parties in this jurisdiction.

WHEREFORE, Plaintiffs prays for judgment as follows:

1. A declaratory judgment from this Court declaring that Hiland is an additional insured under Missouri Basin's Insurance Policy, No. 0935985, and ordering that National Union defend and indemnify Hiland in case number 1:13-cv-52.
2. For legal costs incurred in defending Hiland in case number 1:13-cv-53 as proven, and
3. For such other and further relief as the Court deems just and proper.

DATED this 25 day of February, 2014.

PEARCE & DURICK

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